

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission)	
On its Own Motion)	
)	01-0662
Investigation concerning Illinois Bell)	PHASE II
Telephone Company's compliance with)	
Section 271 of the Telecommunications)	
Act of 1996.)	

REBUTTAL

AFFIDAVIT OF

TIMOTHY M. CONNOLLY

ON BEHALF OF

AT&T COMMUNICATION OF ILLINOIS, INC., TCG
CHICAGO, TCG
ILLINOIS AND TCG ST. LOUIS

PHASE II - AT&T EX. 1.1

March 12, 2003

1. I, Timothy M. Connolly, submit this Rebuttal Affidavit on behalf of AT&T Communications of Illinois, TCG Illinois, and TCG St. Louis (“AT&T”). I am the same Timothy Connolly who submitted an Affidavit (AT&T Exhibit 1.0 & AT&T Exhibit 1.0(P)) on February 21, 2003 in this docket. I will generally refer to this February 21, 2003 affidavit as my initial Affidavit.

2. In this Rebuttal Affidavit, I respond to several witnesses’ affidavits that have been submitted in this case since my initial affidavit. I respond to the Rebuttal Affidavits of SBC Illinois witnesses Messrs. Mark Cottrell and James Ehr. As I explain in this Rebuttal Affidavit, although Messrs. Cottrell and Ehr attempt to respond to my initial Affidavit, they ignore many of the points I have raised, leading me to conclude that SBC Illinois has no real response to the very real concerns identified by me (and, as it turns out, shared by other witnesses, such as Ms. Weber of the Commission Staff). Where these SBC witnesses have chosen to respond to information and analyses I submitted in my initial affidavit, their responses do not refute the same mistakes I criticized initially. I think it is unlikely that these witnesses do not comprehend the points I am raising. Therefore, I consider their choice to repeat arguments SBC Illinois has made in the past, rather than respond to the analysis that I have provided, as confirmation that SBC is unable to supply new and persuasive facts that support its claims.

3. I also respond to a proposal offered by Ms. Weber in her initial affidavit. I agree in almost every respect with Ms. Weber’s analysis, as it is found in her February 21, 2003 affidavit. In particular, I agree with Ms. Weber that, based upon BearingPoint’s (as well as E&Y’s) audit findings to date, SBC Illinois’ performance data cannot properly

be relied upon for checklist compliance.¹ Indeed, it is clear from the February 21, 2003 filings the Commission's Staff has concluded that, despite the considerable time SBC Illinois has had to implement its performance metrics system, there are far too many defects in its performance monitoring and reporting processes to assure accuracy in reported results, and that these inaccuracies in reported results would also thwart the effectiveness of a performance enforcement plan. Staff witness Weber's proposal regarding SBC Illinois' performance metrics data: "Staff recommends the Commission *not provide* a positive Section 271 recommendation to the FCC prior to successful completion of the BearingPoint Performance Metrics review." Weber Aff., ¶ 136(1). I agree with this approach.²

4. Finally, I note that in this Rebuttal Affidavit I will discuss several new BearingPoint test Exceptions and Observation Reports that were issued either just before or after the filing of my initial Affidavit. These newly issued test findings confirm several of the points I have raised in my initial affidavit, particularly with regard to the serious deficiencies BearingPoint has found in its Performance Measurement Review ("PMR"). SBC Illinois has attempted to rebut some (although, as I said previously, not all of my analysis) in its Rebuttal Affidavits. As I show in this Rebuttal Affidavit, these newly issued Exceptions and Observations render SBC Illinois' responses insupportable.

¹ Staff Exhibit 31, Phase II Affidavit of Nancy B. Weber on Behalf of Illinois Commerce Commission, ¶¶ 46-111, (Feb. 21, 2003) (hereinafter "Weber Aff.").

² Unfortunately, I cannot agree with Staff's "fallback" proposal that allows for the Commission to give an positive recommendation to the FCC on checklist compliance "contingent upon a commitment from SBC Illinois that it will address all deficiencies raised by BearingPoint in the metrics review and commit to successfully conclude the BearingPoint metrics review no later than November 2003." *Ibid.*, ¶ 136(2). I do not believe this approach is consistent with what I understand to be the Commission's and the FCC's requirements for SBC Illinois § 271 approval.

I. RESPONSE TO AFFIDAVIT OF JAMES EHR

A. SBC Illinois Misstates The Correct Standard For Compliance

5. As I discussed in my initial affidavit, and again in more detail below, SBC Illinois employs an inappropriate “standard” when it discusses how the Commission should review the current information available regarding the audits of its performance measurement reporting systems. As I noted in paragraph 37 of my initial Affidavit, the appropriate standard for reviewing SBC Illinois’ compliance with § 271 or any other obligation places the burden on SBC Illinois to prove that it has met the non-discriminatory access standard. In its rebuttal affidavits, SBC Illinois’ witnesses continue to try and shift this burden to other parties.

6. For example, in the March 3, 2003 rebuttal affidavit filed by James Ehr (hereinafter “Ehr Rebuttal Aff”), he complains (in paragraphs 121-122) that Staff witness Weber, myself and other witnesses overstate the relevance of BearingPoint’s multiple findings of “Not Satisfied” test results in the PMR review portion of the third-party test. In Mr. Ehr’s view, a Not Satisfied does not equate to failure, it only means that testing is “not complete.” *Ibid.*, ¶ 121. He compounds the confusion inherent in such a statement by further asserting that “one needs to know SBC Illinois’ response to the open test point. As I show below, SBC Illinois has already responded to most of the current Observations and Exceptions, and BearingPoint is in the process of re-testing.” Ehr Rebuttal Aff., ¶ 124.

7. Mr. Ehr and SBC Illinois miss (or perhaps purposefully avoid) the point. As I explained in my initial affidavit, the BearingPoint third-party test was not

established as a type of monitoring process meant to give SBC Illinois an open ended opportunity to improve its OSS performance. The BearingPoint test arose out of the SBC/Ameritech Merger case and SBC Illinois' stated goal of achieving § 271 compliance, and to obtain approval for in-region, interLATA long distance authority from the Federal Communications Commission. It was for these and other reasons that the Master Test Plan ("MTP") was set up with Global Exit Criteria. These criteria (which I explained in paragraphs 173 through 186 of my initial Affidavit)³ rebut Mr. Ehr's claim that "none of BearingPoint's findings thus far are sufficient to warrant a finding of *non-compliance*, or to preclude the Commission from evaluating compliance based on the totality of the information before it..." Ehr Rebuttal Aff., ¶ 118. To the contrary, the failure to satisfy the Global Exit Criteria, or even the failure to establish on a numeric basis the satisfaction of test criteria, is strong verification that SBC Illinois has not complied with the appropriate standards. This is what the MTP was set up to measure – SBC Illinois continues to fall far short of the mark and its promises (like that of the student in my example at paragraph 33 of my initial Affidavit) of future compliance should bear no weight in the Commission's analysis.

B. The BearingPoint Test Continues To Produce Findings Showing Systemic Faults In SBC Illinois' Performance Measurement Reporting Systems

8. Equally important, Mr. Ehr's claims that SBC Illinois is satisfying MTP requirements by providing BearingPoint with additional information and responses is simply erroneous, and is inconsistent with current developments in the testing process.

³ Mr. Ehr's rebuttal affidavit, which appears to replicate in most respects a similar declaration he filed at the

There are at least two reasons why the Commission cannot view SBC Illinois as being any closer to showing that its PMR systems produce accurate results in a stable and reliable manner. First, BearingPoint continues to publish exception and observation Reports that disclose systemic faults in SBC Illinois' PMR systems. Second, BearingPoint continues to report SBC Illinois-caused failures in the testing to replicate published performance results. I discuss each of these points in greater detail below.

9. As I explained in my initial Affidavit, SBC Illinois has not demonstrated that its performance data are accurate, reliable, and stable, which has been a required showing in all prior approved Section 271 applications.⁴ Contrary to SBC Illinois' assertions, the results of the BearingPoint audit do not prove that its performance data are trustworthy. The BearingPoint performance metrics audit that is currently being conducted has revealed numerous deficiencies, which show that SBC's performance monitoring and reporting systems remain rife with error.

10. In my initial Affidavit, I discussed the exceptions and observations that have been opened during the BearingPoint audit, which illustrate the significant defects in SBC's performance monitoring and reporting systems. Although BearingPoint has closed exceptions and observations since I filed my affidavit, BearingPoint has opened new exceptions and new observations, which confirm my views that its data are not accurate, and that it will not soon be able to satisfy the remaining test criteria in the BearingPoint PMR test.

FCC a day later, does not respond to my discussion of the MTP's Global Exit Criteria.

⁴ *Michigan 271 Order*, ¶ 204; *Connecticut 271 Order*, Attach. D., ¶ 7; *Kansas Oklahoma 271 Order*, ¶ 270; *Texas 271 Order*, ¶¶ 428-49; *New York Order*, ¶ 433.

11. **Exception 186.** As discussed in my initial Affidavit, during the PMR1 test, which evaluates “the adequacy and completeness of key policies and procedures for collecting and storing performance data,” SBC Illinois failed 62 of the 126 test criteria, and, most of the remaining test criteria deemed to be “Indeterminate.”⁵ The “Not Satisfied” findings in the PMR1 test rested, in large measure, on Exceptions 19 and 20 in which BearingPoint found that SBC’s documentation surrounding data collection and storage practices, controls and procedures for reporting performance results are inadequate. Although Exceptions 19 and 20 were closed, Exception 186, which was opened in the PMR1 test on February 10, 2003, confirms that SBC Illinois’ procedures and policies for the collection and storage of performance data are inconsistent with regulatory requirements.

12. In Exception 186, BearingPoint found that SBC “did not demonstrate that it retained data from certain systems consistent with regulatory requirements.”⁶ BearingPoint found that SBC failed to retain data from 13 source systems⁷ consistent with regulatory requirements which require the retention of data “for a minimum of 24 months after the conclusion of the year in which the data was collected or 12 months after the issuance of the audit report, whichever is later.”⁸ The affected source systems include a number of critical systems of record such as ARIS/EXACT and ICS/DSS, which are

⁵ Only 11 PMR-1 test criteria are currently scored as satisfied.

⁶ See Attachment 3 to my Initial Affidavit (BearingPoint Exception 186, dated February 10, 2003) at 1.

⁷ The 13 source systems are: ACIS; ALPSS; ARIS/EXACT; CABS; CAMPS; CC MIS Wholesale; DUF Parity File; ICS/DSS; Manual-Directory Assistance Database Measures; Manual-EBTA; Clear Close; NSDB; and RBS.

⁸ BearingPoint Exception 186.

used for pre-ordering, ordering, and provisioning functions, as well as CAMPS, CABS, RBS, DUF files, and ACIS which are used for billing functions.⁹

13. Since the issuance of the Exception, during a status call, BearingPoint reported that it is continuing its evaluation and plans to release periodic updates regarding any other systems of record and reporting systems that have failed to retain data in accordance with regulatory requirements.

14. In Exception 186, BearingPoint pointed out that SBC should have retained from its source systems all data that have been generated since January 2001.¹⁰ However, BearingPoint found that the oldest data that SBC retained from the DUF Parity files were generated in October 2002. Similarly, the oldest data that SBC retained from the ACIS, CAMPS, and Manual-Directory Assistance Database Measures source systems were generated in January 2002, August 2002, and September 2002 respectively.¹¹

15. Although SBC Illinois, in Mr. Ehr's January Affidavit (at ¶¶ 32, 188), touts its willingness to engage in data reconciliation, Exception 186 demonstrates the fragility of SBC Illinois' claims. Clearly, if SBC fails to retain the raw data underlying its performance results in accordance with regulatory requirements, it is impossible for CLECs to engage in any meaningful data reconciliation. As a result, it is absurd for SBC Illinois to assert – as it does here – that it is fully committed to the data reconciliation process. Moreover, as BearingPoint aptly observed in assessing the impact of Exception 186, “[i]f source data is not retained, annual audits of historical data could be impeded,”

⁹ See *id.*; BearingPoint PMR Report, at 13-15.

¹⁰ See BearingPoint Exception 186 at 1.

¹¹ BearingPoint Exception 186 at 1.

“[a]ttempts to trace errors in the reported results could be hindered,” and SBC “may not be able to regenerate performance measurement reports as required.”¹²

16. **Exception 187.** During the PMR1 test, SBC Illinois provided its technical documentation, which identifies “the systems used, the data required, and the step-by-step logic used to arrive at the published performance measurement results.”¹³ Although SBC Illinois has heralded the completeness of its technical documentation and stated that it fully expects to satisfy all test criteria in the PMR1 test,¹⁴ Exception 187, which was opened recently, demonstrates the these contentions are not supportable.

17. SBC Illinois’ unprocessed data, which are first captured in various source systems, “undergo a transformation process in which the data fields necessary for calculating metric results are extracted and housed in repositories.”¹⁵ These data may migrate through more than one source system before reaching “the reporting systems, where the metrics calculations are done.”¹⁶ The data in these “repositories are then further manipulated to produce the metrics results.”¹⁷ However, in Exception 187 which was opened in the PMR1 test on February 13, 2003, BearingPoint found that SBC Illinois’ technical documentation that describes this process and contains the calculation

¹² BearingPoint Exception 186 at 1.

¹³ Attached to this Rebuttal Affidavit as Attachment 8 -- BearingPoint Exception 187, dated February 18, 2003 at 1.

¹⁴ Ehr Rebuttal Aff., ¶¶ 134-138.

¹⁵ BearingPoint PMR Report (Dec. 20, 2002), at 13.

¹⁶ *Id.*

¹⁷ BearingPoint PMR Report (Dec. 20, 2002), p. 13.

logic for its performance results is inaccurate or incomplete with respect to 13 of the 18 measurement groups affecting 55 of the 149 performance measures.¹⁸

18. Mr. Ehr attempts to minimize the impact of Exception 187 in his rebuttal affidavit, claiming that Exception 187 represents a narrowing of focus by BearingPoint.¹⁹ This can hardly be considered the case. The performance measurements that are adversely affected by the deficiencies identified in SBC Illinois' calculation logic are neither trivial nor insignificant. Indeed, the affected performance metrics include measures that have been critical or highly probative in assessing a BOC's performance in prior 271 applications.

19. For example, the FCC has repeatedly stressed the critical importance of timely status notices.²⁰ Similarly, the FCC has recognized that the degree to which orders flow through a BOC's systems without manual intervention is "a potential indicator of a wide range of problems that underlie a determination of whether a BOC provided nondiscriminatory access to its OSS."²¹ In Exception 187, however, BearingPoint found

¹⁸ BearingPoint Exception 187, dated February 18, 2003. The performance measurement groups and measures that BearingPoint identified are: Billing (PMs 14 and 18); Collocation (PM MI 4); Directory Assistance and Operator Services (PM 83); Directory Assistance Database (PMs 110, 111, 112, and 113); Facilities Modification (PMs CW1, CW6, CW7, CW8, CW9, and WI9); Interconnection Trunks (PM 71); Local Number Portability (PMs 91, 92, 93, 95, 96, 97, 98, 99, 100 and 101); Maintenance and Repair (PM 54); Ordering (PMs 5, 5.2, 6, 7, 7.1, 8, 9, 10.1, 10.2, 10.3, 10.4, 11, 11.1, 11.2, 13, 13.1, and MI 2); Other (PMs CW5, MI 9, MI 12, MI 13, and MI 15); Poles, Conduits and Rights of Way (PMs 105 and 106); Pre-Order (PMs 1.1 and 4); and Provisioning (PMs 55.1, 56, and 56.1).

¹⁹ Ehr Rebuttal Aff., ¶ 137.

²⁰ See, e.g., *BellSouth South Carolina 271 Order*, ¶ 139, *Second BellSouth Louisiana Order*, ¶ 131. See also *Georgia/Louisiana 271 Order*, ¶ 143 (noting that "a BOC's overall ability to . . . return timely order confirmation and rejection notices" is "relevant and probative for analyzing a BOC's ability to provide access to its ordering functions in a nondiscriminatory manner") (footnote omitted); *Texas 271 Order* ¶ 179 (same).

²¹ *Georgia/Louisiana 271 Order* ¶ 143; *Texas 271 Order*, ¶ 179.

that SBC Illinois' step-by-step logic for calculating its reported results on status notice timeliness and flow through is inaccurate and incomplete.²²

20. Similarly, the FCC has found that provisioning measures, such as those on average installation interval and percentage of due dates missed, are important “in assessing whether the incumbent LEC processes and completes orders from competing carriers in the same timeframe in which it processes and completes its own retail orders.”²³ However, BearingPoint has found that SBC Illinois' documentation of its performance measurement calculation logic for several provisioning metrics is inadequate: PM 55.1 (Average Installation Interval – DSL); PM 56 (Percent Installations Completed within Customer Requested Due Date); and PM 56.1 (Percent Installations Completed Within the Customer Requested Due Date for Loop with LNP).²⁴

21. As the FCC has also held, “[t]o compete effectively in the local exchange market, competing carriers must be able to diagnose and process customer trouble complaints with the same speed and accuracy that [the BOC] diagnoses and processes complaints from its retail customers.”²⁵ However, BearingPoint found in Exception 187 that SBC Illinois' documentation fails to document adequately the calculation logic used

²² The ordering performance measurements which are impacted by these deficiencies in the calculation logic are: PM 5 (Percent Firm Order Confirmations Returned Within “X” Hours); PM 6 (Average Time to Return FOC); PM 7 (Percent Mechanized Completions Returned Within One Hour of Completion in Ordering Systems); PM 8 (Average Time to Return Mechanized Completions); PM 9 (Percent Rejects); PM 10.1 (Percent Mechanized Rejects Returned Within One Hour of Receipt of Order); PM 10.2 (Percent Manual Rejects Received Electronically and Returned Within Five Hours); PM 10.4 (Percentage of Orders Given Jeopardy Notices); PM 11 (Mean Time to Return Mechanized Rejects); PM 11.1 (Mean Time to Return Manual Rejects That Are Received Via an Electronic Interface); PM 13 (Order Process Percent Flow Through); and PM 13.1 (Total Order Process Percent Flow Through).

²³ *New York 271 Order*, ¶ 195.

²⁴ *See* BearingPoint Exception 187, dated February 18, 2003 at 1.

²⁵ *New York 271 Order*, ¶ 217.

to report results for Performance Measurement 54 (Failure Frequency) which measures the number of network trouble reports within a calendar month per 100 circuits.²⁶

22. The FCC also has held that a BOC is “obligated to provide competing carriers with complete and accurate reports on the service usage of competing carriers’ customers in substantially the same time and manner that [the BOC] provides such information to itself.”²⁷ However, BearingPoint found in Exception 187 that SBC Illinois’ technical documentation does not adequately document the calculation logic used to report performance results for PMs 14 (Billing Accuracy) and 18 (Billing Timeliness – Wholesale Bill). Thus, SBC Illinois’ incomplete or inaccurate documentation of the “step-by-step logic used to arrive at the published performance results” has negatively impacted numerous performance measures that are essential to competitive entry.²⁸

23. Importantly, in Exception 187, BearingPoint found that the inaccuracies in SBC Illinois’ documentation “may include database queries that incorrectly document the extraction of data and calculation of performance results.”²⁹ Given the critical importance of correct data extractions when calculating performance results, Exception 187 is a striking example of the inherent risk of relying on the performance data submitted by SBC Illinois. In assessing the impact of this exception, BearingPoint observed that “[a]ccurate documentation for calculating performance measurement

²⁶ BearingPoint Exception 187, dated February 18, 2003 at 1.

²⁷ *New York 271 Order*, ¶¶ 226.

²⁸ *See* BearingPoint Exception 187 at 1.

²⁹ *Id.*

results is necessary to maintain consistency in the calculation process and to enable effective management of changes to the calculations over time.”³⁰

24. Moreover, BearingPoint is continuing to analyze the sufficiency of SBC’s technical documentation for other measures and will update Exception 187 accordingly. It is possible, if not probable, that as more faults are found, these deficiencies will negatively impact other areas of testing where success is dependant on first establishing the validity of technical documentation. Notably, because the PMR1 test is inextricably linked to the PMR4 (Data Integrity) and PMR5 (Metrics Replication) tests, testing failures in PMR1 that are the subject of Exception 187 could spawn test failures in or thwart the completion of the PMR4 and PMR5 tests.

25. For example, during the PMR4 (Data Integrity) test, BearingPoint obtains from SBC Illinois “unprocessed data from the earliest electronic capture point[s]” that are identified during the PMR1 test.³¹ During the data integrity phase of testing, BearingPoint assesses the completeness and accuracy of SBC Illinois’ data by comparing unprocessed data with processed data and SBC’s adherence to the performance measurements technical documentation, which is evaluated during the PMR1 test.³² However, SBC Illinois’ inaccurate or incomplete calculation logic examined during the PMR1 test could lead to test failures or adversely affect the ability of BearingPoint to test the completeness and accuracy of SBC’s data during the PMR4 test.

³⁰ *Id.* at 2.

³¹ BearingPoint PMR Report (Dec. 20, 2002) at 29.

³² *Id.* at 30.

26. Similarly, during the PMR5 (Metrics Replication) test, BearingPoint examines, *inter alia*, “the procedures necessary for the calculation of the performance measurements” which are evaluated during the PMR1 test and confirms whether the metric values that SBC Illinois has reported are accurate and consistent with the metrics business rules governing the measures.³³ Because PMR1 testing is inescapably linked to PMR5 testing, it logically follows that the deficiencies in the calculation logic uncovered during the PMR1 test which are the subject of Exception 187 could result in test failures or incomplete testing during the PMR5 phase. More fundamentally, in view of the serious deficiencies in SBC’s technical documentation which sets forth the calculation logic used to produce its reported results, SBC Illinois cannot legitimately contend that its performance data are accurate and “above suspicion.”³⁴

27. **Exception 188.** On February 18, 2003, BearingPoint opened Exception 188, finding that SBC Illinois’ data flow diagrams (which document data flows from the Performance Measurement Reporting System to source systems) and data element maps (which document data flows from the Performance Measurement Reporting System to source systems at the field level) do “not consistently present an adequate depiction of the flow of data from the source systems to the performance measurement reporting systems for certain performance measurements.”³⁵ In this exception, BearingPoint identified 12 measurement groups and 42 performance measurements as to which SBC’s data flow

³³ *Id.* at 33.

³⁴ *Texas 271 Order* at ¶ 429.

³⁵ Attached hereto this Rebuttal Affidavit as Attachment 9 -- BearingPoint Exception 188, dated February 18, 2003 at 1.

documentation appears to be inaccurate.³⁶ The inaccuracies that BearingPoint “found in the documentation include the absence of certain intermediate systems and unclear sources of data elements.”³⁷ Additionally, BearingPoint pointed out that it is still in the process of examining the accuracy of technical documentation for other performance measurements.

28. Similar to his statements with regard to Exception 187, Mr. Ehr also minimizes the scope and seriousness of BearingPoint’s Exception 188. *See* Ehr Rebuttal Aff., ¶ 133, 137. In this testimony, Mr. Ehr fails to acknowledge that correct mapping of data fields is essential to consistent and accurate performance reporting. SBC Illinois’ data flow diagrams and data element maps are the blueprints that serve as the basis upon which SBC analysts and programmers manage the data underlying SBC Illinois’ reported results. These documents also are used to effect the changes in the performance monitoring system that are necessary to correct any defects in SBC Illinois’ implementation of the metrics business rules which are identified in exceptions and observations during metrics testing. When data flow diagrams and data element maps are inaccurate and incomplete, system changes will be made on the basis of incorrect specifications that can substantially increase the risk that errors and internal inconsistencies will be introduced into the changed systems. In assessing the impact of Exception 188, BearingPoint explained that “[a]ccurate documentation, which describes

³⁶ The performance measurement groups and measures are: 911 (PMs 104.1, MI 6); Bona Fide Requests (PMs 120, 121); Billing (PMs 14, 19); Coordinated Conversions (PM 115.2); Directory Assistance Database (PMs 111, 113); Facilities Modification (PMs CW1, CW6, CW7, CW8, CW9); Interconnection Trunks (PM 71); Local Number Portability (PMs 91, 92, 93, 95, 99); Miscellaneous Administration (PM 25); Order (PMs 5, 5.2, 6, 7, 7.1, 8, 9, 10, 10.1, 10.2, 10.3, 10.4, 11, 11.1, 11.2, 13, 13.1, MI 2); Other (PMs MI 9, MI 13); and Pre-Order (PM 4).

the flow of performance data through SBC Ameritech's systems, is necessary to maintain consistency in the resulting calculation process and to enable effective management of changes to the data flows."³⁸

29. **Observations.** The deficiencies in SBC's performance monitoring and reporting processes are also illustrated by the observations that have been opened during the BearingPoint Illinois test. Although a number of observations have been closed since I filed my initial Affidavit, sixteen new observations have been opened.³⁹

30. On February 17, 2003, BearingPoint opened Observation 809 in the PMR4 test (as well as the PMR5 test), finding that SBC Illinois "appears to be using inaccurate data when calculating performance results for Performance Measurement 10 (Percent Mechanized Rejects Returned Within One Hour of Receipt of Reject in MOR) and Performance Measurement 11 (Mean Time to Return Rejects).⁴⁰ In this observation, BearingPoint noted that the business rules governing the measures state that the "[t]he start time . . . is the date and time the reject is available to MOR and the end time is the date and time the reject notice is sent to the CLEC."⁴¹ However, BearingPoint found that, with respect to 40 percent of the mechanized rejection transactions examined, SBC Illinois reported negative durations. Noting that negative durations are impossible, BearingPoint found that SBC Illinois does not appear to "maintain synchronicity between

³⁷ BearingPoint Exception 188 at 1.

³⁸ *Id.* at 2.

³⁹ The sixteen observations are Observations 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816 and 817. Each of these Observations was opened for Illinois and one or more of the other four SBC Midwest states. Observations 803, 807 and 808 are in the process of being closed.

⁴⁰ BearingPoint Observation 809, dated February 17, 2003.

⁴¹ *Id.*

the two applicable time-stamping mechanisms.”⁴² BearingPoint also found that, although SBC Illinois asserted that it adjusts transactions with a negative duration by using a “0” time duration, this adjustment “does not yield accurate performance measurement results [and could make] other ‘positive’ durations appear shorter than their actual length.”⁴³

31. In the PMR4 and PMR5 tests, BearingPoint also opened Observation 810 on February 17, 2003, finding that SBC failed to adhere to the July 2002 business rules when calculating results for Performance Measurement 55.3 (Percent xDSL - Capable Loop Orders Requiring the Removal of Load Coils and/or Repeaters).⁴⁴

32. On February 13, 2003, BearingPoint opened a number of observations in the PMR5 test, finding that it could not replicate SBC’s July 2002 performance data for: Performance Measurement 92 (Percentage of Time the Old Service Provider Releases the Subscription Prior to the Expiration of the Second 9 Hours (T2) Timer);⁴⁵ Performance Measurement 96 (Percentage Pre-Mature Disconnects for LNP Orders);⁴⁶ and Measurement 97 (Percentage of Time SBC Ameritech Applies the 10-Digit Trigger Prior to the LNP Order Due Date).⁴⁷

33. In three observations opened on February 27, 2003 in the PMR5 test, BearingPoint found that: (1) SBC’s reported results for PM 2 (Percent Response Received Within “X” Seconds – OSS Interfaces) do not comply with July, August and

⁴² *Id.*

⁴³ *Id.*

⁴⁴ BearingPoint Observation 810, dated February 17, 2003.

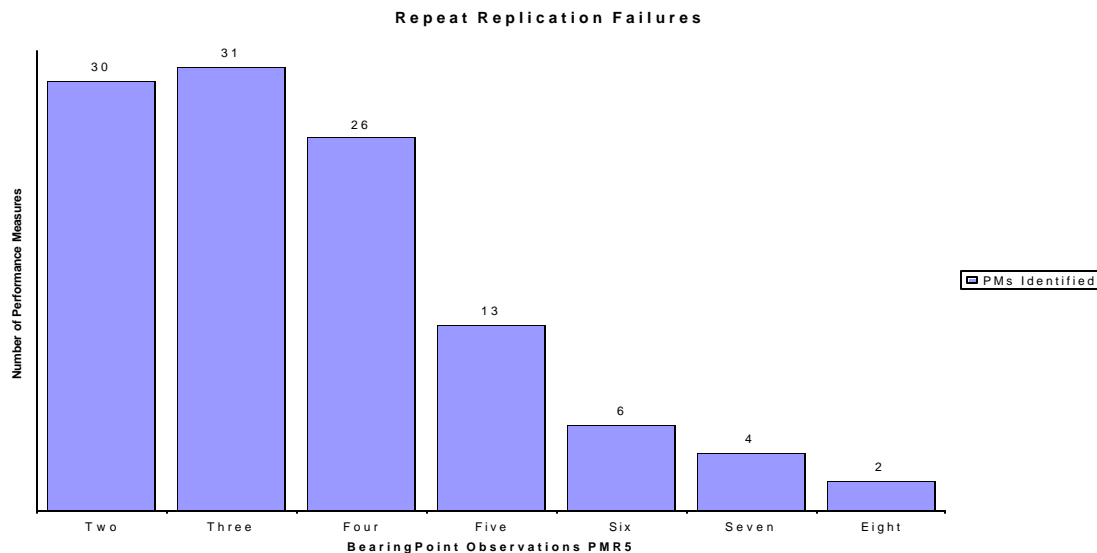
⁴⁵ BearingPoint Observation 802, dated February 13, 2003.

⁴⁶ BearingPoint Observation 805, dated February 13, 2003.

⁴⁷ BearingPoint Observation 806, dated February 13, 2003.

September 2002 business rules because they inappropriately exclude certain weekday transactions and incorrectly include certain Saturday transactions;⁴⁸ (2) it could not replicate SBC's restated July 2002 results for PM 2 (Percent Response Received Within "X" Seconds);⁴⁹ and (3) SBC Illinois has improperly implemented the July, August and September 2002 business rules for PM CLEC WI 1 (Average Delay in Original FOCs Due Dates Due to Delay Notices (Issue F)).⁵⁰

34. Significantly, there are multiple observations associated with 104 performance measures that have repeatedly failed the PMR5 metrics replication test. These repeated failures reflect SBC's demonstrated inability to generate accurate reported results for these measures as shown by the histogram below:



⁴⁸ BearingPoint Observation 811, dated February 27, 2003.

⁴⁹ BearingPoint Observation 812, dated February 27, 2003.

⁵⁰ BearingPoint Observation 813, dated February 27, 2003.

35. The performance measurements that have suffered from multiple failures during the PMR5 test include many measures that this Commission has considered in assessing Section 271 compliance. As noted above, the FCC has examined flow through data in determining whether the BOC has provided nondiscriminatory access to its OSS. However, SBC Illinois' performance data on PMs 13 (Order Processing Percent Flow Through) and 13.1 (Total Order Process Percent Flow Through) have failed the PMR5 test multiple times.

36. Thus, for example, in Observation 299 opened on April 3, 2002, BearingPoint found that it could not replicate SBC's October 2001 reported data for PM 13.1 (Total Order Process Percent Flow Through).⁵¹ In Observation 488 opened on June 3, 2002, BearingPoint found that SBC failed to comply with published business rules by improperly excluding revisions to orders when calculating its PM 13.1 results for UNEs.⁵² In Observation 591 opened on August 6, 2002, BearingPoint found that it could not replicate SBC's January 2002 results for PM 13.1.⁵³ On September 23, 2002, BearingPoint opened Observation 661, finding that SBC was improperly excluding project orders from its PM 13.1 results for January, February, and March 2002.⁵⁴ On January 16, 2003, BearingPoint found, in Observation 787, that SBC was improperly "excluding orders with particular order class codes" when calculating its results for PM

⁵¹ BearingPoint Observation 299, dated April 3, 2002.

⁵² BearingPoint Observation 488, dated June 3, 2002. *See also* BearingPoint Observation 488, Version 2, dated June 17, 2002.

⁵³ BearingPoint Observation 591, dated August 6, 2002.

⁵⁴ BearingPoint Observation 661, dated September 23, 2002. *See also* BearingPoint Observation 661, Version 2, dated November 26, 2002.

13.1 for July, August, and September 2002.⁵⁵ The chronic failure of PM 13.1 to satisfy the PMR5 replication test shows that SBC Illinois' performance data are highly suspect, and any claims of compliance on this measure should not be credited.

37. Similarly, the FCC has repeatedly stressed the "critical" importance of timely jeopardy notices to CLECs so that they can inform their customers when services will not be installed on the scheduled due date and promptly reschedule the time for service installation.⁵⁶ However, SBC's performance data on PM 10.4 (Percentage of Orders Given Jeopardy Notices) have repeatedly failed the PMR5 test and have been the subject of seven observations which show the following:

- SBC's posted results for PM 10.4 do not comply with the January and February 2002 published business rules.⁵⁷
- SBC's reported results for PM 10.4 do not comply with the January, February, and March 2002 business rules because SBC "has been incorrectly marking some unbundled loop orders as related orders, causing them to be incorrectly categorized."⁵⁸
- SBC's reported results for PM 10.4 do not comply with the January, February, and March 2002 business rules because of transaction timestamp errors.⁵⁹
- SBC's reported results for PM 10.4 do not comply with the January, February and March 2002 business rules because SBC captures only

⁵⁵ BearingPoint Observation 787, dated January 16, 2003.

⁵⁶ See, e.g., *First Louisiana Order*, ¶ 39; *Second Louisiana Order*, ¶¶ 131, 133.

⁵⁷ BearingPoint *Observation* 534, dated June 17, 2002.

⁵⁸ BearingPoint Observation 583, dated July 24, 2002.

⁵⁹ BearingPoint Observation 676, dated October 9, 2002. See also BearingPoint Observation 676, Version 2, dated November 21, 2002.

those “jeopardies that are issued within 24 hours of the due date for the retail analogs of this measure.”⁶⁰

- SBC is improperly applying exclusions when calculating its January, February, and March 2002 results of PM 10.4.⁶¹
- SBC is improperly applying exclusions when calculating its July, August, and September 2002 results of PM 10.4.⁶²
- SBC’s posted data for PM 10.4 do not comply with the July, August, and September 2002 business rules because SBC has excluded “system downtime, weekends and holidays.”⁶³

38. The FCC also has examined performance data on completion notices in assessing whether the BOC has satisfied its statutory obligations.⁶⁴ However, SBC Illinois’ performance data on PM 7.1 (Percent Mechanized Completions Returned Within One Day of Work Completion) have been the subject of five observations during the PMR5 metrics replication test which reveal that:

- BearingPoint could not replicate SBC’s October 2001 PM 7.1 results for UNEs.⁶⁵

⁶⁰ BearingPoint *Observation* 684, dated October 23, 2002. *See also* BearingPoint *Observation* 684, Version 2, dated November 21, 2002.

⁶¹ BearingPoint *Observation* 687, dated October 23, 2002. *See also* BearingPoint *Observation* 687, Version 2, dated November 21, 2002.

⁶² BearingPoint *Observation* 725, dated December 3, 2002.

⁶³ BearingPoint *Observation* 756, dated December 17, 2002. *See also* BearingPoint *Observation* 756, Version 2, dated January 21, 2003.

⁶⁴ *See, e.g., Second Louisiana Order*, ¶ 30; *Georgia/Louisiana Order*, ¶¶ 153-154.

⁶⁵ BearingPoint *Observation* 297, dated April 3, 2002.

- SBC does not follow the published business rules governing PM 7.1 and has improperly excluded Stand-Alone LNP Orders from the UNE disaggregation for October 2001 results.⁶⁶
- SBC's reported results for PM 7.1 do not comply with January, February, and March 2002 published business rules because SBC has improperly excluded Stand-Alone LNP Orders from the UNE disaggregation.⁶⁷
- SBC's reported results for PM 7.1 do not comply with the January, February, and March 2002 published business rules because SBC used business days instead of calendar days in its calculations.⁶⁸
- SBC improperly includes "CLEC-caused misses and delays" when calculating its PM 7.1 results for July and August 2002.⁶⁹

39. Other performance metrics that have repeatedly failed the PMR5 metrics replication test include: PMs 43 and 55, which measure average installation intervals; PMs 17 (Billing Completion) and 19 (Daily Usage Feed Timeliness); and PM 67 (Mean Time to Restore). In prior applications, this Commission has examined performance data on such measurements in assessing Section 271 compliance.⁷⁰ Attachment 10 to this Affidavit contains a comprehensive list of performance measures that have repeatedly failed the PMR5 test and which have been mapped to observations discussing the deficiencies in these measures. Attachment 11 to this Rebuttal Affidavit portrays this

⁶⁶ BearingPoint Observation 430, dated May 2, 2002.

⁶⁷ BearingPoint Observation 493, dated June 3, 2002.

⁶⁸ BearingPoint Observation 659, dated September 23, 2002.

⁶⁹ BearingPoint Observation 743, dated December 12, 2002.

⁷⁰ See, e.g., *Michigan 271 Order*, ¶ 212 (referring to performance data on average installation intervals and billing); *id.*, ¶ 221 (referring to billing and usage data); *First Louisiana 271 Order*, ¶ 41 (noting that "[a] critical measure in determining whether a BOC has been providing competing carriers with nondiscriminatory access to its operational support systems is average installation intervals") (footnote omitted); *New York 271 Order*, ¶ 202 (referring to average installation intervals); *id.*, ¶ 221 (referring to mean time to restore); *id.*, ¶ 227 (referring to billing data).

information graphically. As is shown, every performance measure group has been impacted by SBC Illinois' inability to show that its performance measurement results are capable of replication. Moreover, several of the most critical measure groups (PreOrder/Order, Provisioning UNEs and M&R) represent the groups with the largest number of measures affected by this problem.

40. The chronic failures of SBC Illinois's performance measures to satisfy PMR5 replication testing show that SBC Illinois has not met and cannot meet its burden of demonstrating that its data are accurate, complete and reliable.⁷¹ Moreover, given the substantial problems regarding the integrity of SBC Illinois data that have been uncovered to date and the testing that remains to be completed, it is entirely possible that new exceptions and observations will yet be opened. For all of these reasons, SBC's claims of progress in the PMR test are premature, and SBC Illinois cannot legitimately contend it has satisfied its burden of proof in this proceeding.

C. E&Y's Third Corrective Action Report Confirms That SBC's Data Integrity Issues Remain Unresolved.

41. In his rebuttal affidavit, Mr. Ehr repeats the claim he made in his initial affidavit that E&Y's audit of SBC Illinois' PMR systems provide "additional" assurances that PMR results are calculated accurately.⁷² As I explained in my initial Affidavit, SBC

⁷¹ As of March 12, 2003, the open exceptions in the Illinois PMR test are: 41, 111, 119, 134, 157, 175, 176, 179, 181, 183, 186, 187, and 188. The observations which are open as of February 28, 2003 are: 429, 461, 488, 538, 547, 570, 584, 587, 594, 613, 619, 623, 624, 625, 627, 630, 631, 633, 637, 638, 639, 643, 645, 661, 664, 676, 679, 684, 686, 687, 688, 697, 709, 710, 717, 721, 725, 727, 729, 732, 737, 738, 739, 747, 748, 749, 755, 766, 767, 768, 769, 771, 772, 776, 778, 785, 786, 787, 791, 792, 793, 794, 796, 797, 798, 800, 802, 803, 804, 805, 806, 807, 809, 810, 811, 812, 813, 814, 815, 816, 817, and 818.

⁷² Ehr Rebuttal Aff., ¶ 93.

Illinois' arguments that the E&Y audit serves as proof that its data are accurate and reliable are belied by: (1) the fact that SBC hand-picked its financial auditor to conduct an end-run around the audit conducted by BearingPoint under a Master Test Plan that had been approved by the Commission;⁷³ (2) the procedural and substantive deficiencies in E&Y's audit procedures, including the lack of military-style testing to assure that SBC Illinois had taken appropriate action to correct defects in its data; (3) E&Y's own reports, which are littered with issues highlighting the unreliability of SBC Illinois' data; and (4) the defects in SBC Illinois' performance monitoring and reporting processes which BearingPoint continues to uncover and which E&Y failed to detect.

42. On February 28, 2003, SBC filed with the Michigan Public Service Commission an update on the current status of the corrective action it purportedly has taken to address E&Y's findings, along with E&Y's Supplemental Report Regarding Management's Assertions dated February 28, 2003.⁷⁴ E&Y's Third Corrective Action Report and SBC's update provide further confirmation that SBC's data are untrustworthy, and that its Application is premature.

⁷³ Mr. Ehr appears to confirm this when he states: "That is why SBC Illinois engaged E&Y to supplement the record." Ehr Rebuttal Aff., ¶ 118. SBC Illinois has admitted that it retained E&Y because it could not hope to satisfy the Master Test Plan requirements or BearingPoint's testing methodology in time to satisfy its own internal plans for seeking § 271 authority.

⁷⁴ See SBC Submission of Supplemental Ernst & Young Reports and Update on Current Status of Corrective Actions, attaching E&Y Report of Independent Accountants, dated February 28, 2003 and SBC Report of Management on Changes Implemented to the Reporting of Performance Measurements Pursuant to the Michigan Business Rules, dated February 28, 2003 ("Third Corrective Action Report"), *In the Matter, on the Commission's own Motion to Consider Ameritech Michigan's Compliance with the Competitive Checklist in Section 271 of the Telecommunications Act of 1996*. This report is available from the Michigan Commission web site at the following URL: http://www.cis.state.mi.us/mpsc/comm/271/sbc_submission_for_supp_ey_report.pdf.

43. In its Third Corrective Action Report E&Y states that, with two exceptions, it has examined the assertions of SBC's management regarding the status of SBC's remedial steps "to address instances of material noncompliance with the Michigan Business Rules."⁷⁵ The Third Corrective Action Report discusses, *inter alia*, exceptions that ostensibly have been corrected by SBC as a result of restatements on February 5, 2003; corrective actions that SBC has implemented on January 20 or February 20, 2003; and exceptions that "are pending corrective action."⁷⁶

44. As I have previously explained, because of the flawed methodology that E&Y has used to test SBC Illinois' corrective action, there is no sound basis upon which any conclusion can be reached that SBC has successfully resolved the deficiencies in its data that have been identified by E&Y.⁷⁷ Relatedly, as discussed in the next section of this affidavit, the ICC Staff has separately concluded that, because of the limited testing E&Y has conducted, no comfort can or should be taken that SBC has implemented the necessary corrective steps to assure that its September-November 2002 data upon which it relies are accurate.

45. Even assuming *arguendo* that SBC Illinois has, in fact, implemented the corrective steps it describes in its Third Corrective Action Report – and there is no reliable, verifiable proof that it has – it is particularly telling and disturbing that it has taken SBC such an extraordinarily long time to correct a *portion* of the deficiencies in its

⁷⁵ See Third Corrective Action Report, p. 1.

⁷⁶ See SBC Report of Management on Changes Implemented to the Reporting of Performance Measurements Pursuant to the Michigan Business Rules, dated February 28, 2003 at 2, Third Corrective Action Report.

⁷⁷ See AT&T Exhibit 1.0P, Affidavit of Timothy Connolly, ¶ 136-147.

March, April and May 2002 data (which are now 10-12 months old) that E&Y documented in its October 2002 report. To make matters worse, by SBC's own admission, it still has not corrected all of the problems that E&Y has identified.

46. Thus, for example, E&Y found that SBC failed to identify DSL transactions by geographic region as required by the business rules governing PMs 55.1, 55.3, 56, 58, 59, 60, 61, 62, 63, and 65. SBC states that it has implemented a new code to correct these problems and *plans to restate* its July through December 2002 results in the second quarter of 2003.⁷⁸

47. Additionally, E&Y found that SBC improperly excluded wholesale transactions from its reported results for PM MI 12 (Average Time to Clear Service Order Errors). SBC reports that, commencing with its January 2003 results, it starting capturing these records, and that, "[i]f possible and required, July 2002 through December 2002 results will be scheduled for restatement in the second quarter of 2003." In that connection, SBC notes that its "ability to restate is *being evaluated*."⁷⁹

48. In the Third Corrective Action Report, SBC also admits that it has not yet completed its implementation of other remedial steps that are necessary to cure the defects in its data. Thus, SBC concedes that:

- SBC has not yet implemented the computer programming changes to include orders involving projects in its reported results for PM 91 (Percentage of LNP Only Due Dates Within Industry Guidelines);⁸⁰

⁷⁸ Third Corrective Action Report, Attach. A at 7, Issue IV-15.

⁷⁹ *Id.*, Issue IV-27 (emphasis added).

⁸⁰ *See id.* at 9, Issue No. III-10(ii).

- SBC has experienced yet another delay in implementing the computer code changes to address E&Y's findings that SBC failed to exclude CLEC-caused delayed unlocks in calculating its results for PM 104.1 (Average Time It Takes to Unlock the 911 Record).⁸¹
- SBC plans to implement with its results reported in March 2003 a new programming code to address E&Y's finding that it "incorrectly reported internal orders impacting the CLEC portion of a partially 'won-back' account as wholesale orders during March, April and May, 2002";⁸²
- With its results reported in March 2003, SBC plans to implement corrective steps to address E&Y's finding that SBC failed to report "the UNE-P level of disaggregation for electronically processed completion notices" when calculating its results for MI 14 (Percent Completion Notifications Returned Within "X" Hours of Completion of Maintenance Trouble Ticket);⁸³
- SBC plans to implement computer programming changes in its February results reported in March 2003 to address E&Y's finding that customer-caused no-access reports were inappropriately included in its performance results for PM WI 1 (Percent No Access – UNE Loops Provisioning);⁸⁴
- SBC plans to implement, effective with its February 2003 results reported in March 2003, a computer programming code to address E&Y's finding that it did not include data for UNEs and Specials when reporting its results for C WI 5 (Percentage of Protectors Not Removed at Technician Visit (Issue O)).⁸⁵

49. Furthermore, in its Third Corrective Action Report, E&Y states that it has *not* examined and, therefore, renders *no* opinion with respect to the computer program code changes SBC claims to have made to address E&Y's findings that: (1) SBC failed to capture customer-requested due dates when calculating its performance results for PM 27 (Mean Installation Interval) and 28 (Percent POTS/UNE-P Installations Completed

⁸¹ See *id.*, Issue No. II-B-8(ii).

⁸² *Id.* at 10, Issue No. IV-12.

⁸³ *Id.*, Issue No. IV-28.

⁸⁴ *Id.* at 11, Issue IV-30.

⁸⁵ *Id.*, Issue No. IV-31.

Within the Customer Requested Due Date); and (2) SBC used the wrong field when determining the “exclusion for customer-requested due dates in excess of the stated time period” when calculating its results for PMs 43, 44, 55, 55.1, 56, and 56.1.⁸⁶ As to these issues, SBC states that it has implemented a computer code to fix these defects in the data, but that it plans to restate its July through December 2002 results in the second quarter of 2003. Because E&Y has unequivocally stated that it has not undertaken any review of these assertions, the current record is bereft of any evidence confirming that these coding changes have corrected or will correct SBC’s errors in calculating performance results for these provisioning measures. And, of course, it remains to be seen whether SBC’s restatements accurately reflect SBC’s performance.

50. Thus, by its own admission, SBC still has not resolved the deficiencies that E&Y identified during its audit and corrected all errors in its performance data. These admissions underscore that the performance data for these measures in SBC Illinois’ performance metrics reports are inaccurate. If and when SBC Illinois finally completes all corrective steps necessary to correct its error-ridden processes, there must, and should, be verifiable evidence that SBC Illinois’ corrective action has successfully resolved the data integrity issues, and that its restated data are accurately reported. Such confirmation is absolutely essential, particularly given the considerable difficulties BearingPoint is currently experiencing in attempting to replicate SBC Illinois’ restated results.

⁸⁶ *Id.* at 6, Issue Nos. IV-11 and IV-14(ii).

51. Importantly, in its most recent status report, SBC also has admitted that its “final report” on the status of its corrective action will not be filed until the *second quarter of 2003*. Thus, it is clear that the deficiencies in SBC’s data that E&Y identified in its albeit, flawed audit will not be resolved for some time. Given these circumstances, as well as the significant data integrity issues that BearingPoint continues to uncover, SBC cannot seriously contend (as Mr. Ehr does in his rebuttal affidavit) that the E&Y audit serves as probative evidence that the performance data upon which it relies are accurate and show checklist compliance. The procedural and substantive deficiencies in the E&Y audit, standing alone, preclude such a finding. And, in all events, even E&Y’s flawed audit reveals that considerable work remains to be done before SBC can legitimately contend that its performance data are reliable.

II. THE STAFF HAS SIMILARLY CONCLUDED THAT SBC ILLINOIS’ DATA ARE INACCURATE AND UNRELIABLE.

52. As described in more detail below, the Staff’s filings in this case are consistent with AT&T’s and my own analyses of SBC Illinois’ performance measurement data. Based upon its own independent examination of the BearingPoint and E&Y audits (together with SBC Illinois’ other proffered evidence of purported indicia of data reliability), the Staff has concluded that SBC Illinois’ performance data are “*not reliable and should not be used as evidence of SBC Illinois’ compliance with the Section 271 checklist, nor as a public interest component, nor [as] an assurance that the*

*company will not backslide in its performance once granted Section 271 approval by the Federal Communications Commission*⁸⁷

53. **Analysis of BearingPoint Audit.** Consistent with its approach in this proceeding, SBC Illinois argued in this proceedings that “none of BearingPoint’s findings thus far are sufficient to warrant a finding of *non*-compliance, or to preclude the Commission from evaluating compliance based on the totality of the information before it, including SBC’s reported commercial performance results and the E&Y audit.”⁸⁸ The ICC Staff soundly rejected SBC’s arguments.

54. Noting that SBC Illinois has satisfied 23.7 percent and failed 42.8 percent of the Illinois PMR test criteria and that 33.6 percent of the test criteria are “Indeterminate,” the Staff states that SBC Illinois failed to meet its burden of demonstrating that its data are accurate and reliable.⁸⁹ The Staff found that, notwithstanding the “more than 2-1/2 years” SBC has had “to develop, deploy and perfect its performance measurements and reporting system . . . far too many inaccuracies and problems remain for the Commission to have confidence in the current and future accuracy of the performance measure data SBC Illinois reports.”⁹⁰ Indeed, the Staff found that BearingPoint’s findings in the Illinois PMR test “taken alone – and without even considering the findings in the E&Y evaluation . . . raise serious doubt as to the integrity and accuracy of SBC Illinois’ performance measurement data and SBC Illinois’

⁸⁷ ICC Staff Weber Aff., ¶ 4.

⁸⁸ Ehr Rebuttal Aff., ¶ 118.

⁸⁹ ICC Staff Weber Aff., ¶ 55.

⁹⁰ *Id.*, ¶ 48.

ability to produce the data, which contradict the statements of [SBC's witness] Mr. Ehr."⁹¹

55. After commenting on the critical importance of the data collection and storage processes in assuring the accuracy of data and conducting thorough audits,⁹² the Staff then pointed out that SBC Illinois satisfied only 10 percent and failed 48 percent of the test criteria in the PMR1 test which evaluates SBC Illinois' data collection and storage processes. Noting that none of the seven test criteria for the PMR1 test had "a complete set of satisfied results" and that BearingPoint had unearthed significant defects regarding the accuracy and completeness of SBC's data collection, storage process, and technical requirements documentation, the ICC Staff concluded that BearingPoint's findings "raise too many questions to trust that SBC Illinois has adequate data collection and storage practices and procedures in place to be able to report its performance metrics data in an accurate and consistent manner."⁹³

56. Furthermore, the Staff concluded that BearingPoint's findings in the PMR3 test regarding SBC's metrics change management practices revealed "*grave deficiencies*" in SBC's processes, stating:

Specifically, BearingPoint has observed instances where SBC Illinois' metrics change management process does not provide for the monitoring of source systems for changes that impact metrics reporting; SBC Illinois does not comply with intervals for implementing changes to metrics business rules; SBC Illinois does not have adequately defined procedures or tools to test changes to calculation programs, processes; and systems involved

⁹¹ *Id.*, ¶ 53.

⁹² *Id.*, ¶ 58.

⁹³ *Id.*, ¶¶ 61-62.

in the production and reporting of performance measurements and that performance metrics changes did not follow the documented metrics change management process. These findings reflect *grave deficiencies* in key processes that a company needs to have in place to implement changes to its performance measurements without impacting the integrity or accuracy of the data being reported.⁹⁴

57. In discussing the results of BearingPoint's PMR4 test (Data Integrity), the Staff noted that: (1) BearingPoint had uncovered data integrity issues affecting 8 measure groups;⁹⁵ (2) BearingPoint could not even conduct a data integrity review for five measure groups;⁹⁶ (3) investigation of the remaining measure groups is still underway; and (4) BearingPoint had issued a number of exceptions in the PMR4 test since the release of its report. The Staff found that, in these circumstances, "[s]uccessful completion of this test is very important, as data integrity problems, such as missing data or incorrect transformation of data, may result in performance measurements being misstated."⁹⁷

58. Similar to my discussion above, the Staff also recounted the history of BearingPoint's efforts to attempt to replicate SBC Illinois's reported values during the PMR5 test. Significantly, after reviewing BearingPoint's PMR5 findings, the Staff concluded that "[i]t is clear that the PMR5, data replication, review by BearingPoint is not complete, and BearingPoint has been unable to verify that the company calculates its

⁹⁴ *Id.*, ¶ 66 (emphasis added).

⁹⁵ The 8 affected measure groups are: Ordering, Provisioning, Billing, 911, Coordinated Conversions, Bona Fide Requests and Other. *Id.*, ¶ 71.

⁹⁶ The five measure groups are Miscellaneous Administrative, Directory Assistance/Operator Services, Poles, Conduits and Right-of-Way, Collocations, and Directory Assistance Database. *Id.*, ¶ 72 (footnote omitted).

⁹⁷ ICC Staff Weber Aff., ¶ 71.

performance measurements correctly and in accordance with the Company's approved business rules."⁹⁸

59. In summarizing the results of the BearingPoint PMR test, the Staff found that BearingPoint's findings crystallize this salient fact: SBC Illinois' performance data cannot properly be relied upon to demonstrate statutory compliance, stating:

Of the five primary test families that BearingPoint conducted tests upon, SBC Illinois has only satisfied the PMR2 review. SBC Illinois has been unable to demonstrate to BearingPoint that it can satisfy the evaluation criteria with respect to its data collection and storage capabilities, its metrics change management policies and practices, its performance measurement data integrity and its ability to calculate its performance measurement results and retail analogs. The specific metrics deficiencies reported by BearingPoint . . . and the evaluation criteria BearingPoint has been unable to opine upon 26 months after beginning the evaluation of SBC Illinois' performance metrics data and reporting systems, provides clear indication that there is more work to be done and that at this time the Commission should not rely upon the performance measurement data being reported by the company.⁹⁹

60. Additionally, although BearingPoint's most recent project plan indicates that the PMR review in Illinois "is scheduled to complete in June 2003," the Staff found that given "the repeated delays" since the test's inception, "it is unlikely that the review will be successfully completed within the June 2003 timeframe."¹⁰⁰

61. **Analysis of E&Y Audit.** The Staff also concluded that the "findings in the E&Y report present strong evidence" that SBC's performance data are

⁹⁸ ICC Staff Weber Aff., ¶ 77.

⁹⁹ *Id.*, ¶ 78.

¹⁰⁰ *Id.*, ¶ 79. I believe the Staff's observation is correct and is squarely at odds with that of the Department of Justice, which notes in its evaluation that the BearingPoint audit will be completed before SBC applies for 271 approval for other states. *See* Evaluation of the United States Department of Justice, *Michigan 271 Proceeding*, dated February 26, 2003 at 16.

“unreliable.”¹⁰¹ As a preliminary matter, the Staff pointed out that SBC hired E&Y long *after* BearingPoint had been approved by the Commission to conduct third-party testing.¹⁰² After noting that “portions of BearingPoint’s PMR1 test, and all of its PMR2 and PMR3 tests were not covered by E&Y’s examination,” and that E&Y’s methodologies for determining compliance with test criteria were quite different from those used by BearingPoint in the Master Test Plan, the Staff concludes that the E&Y audit is not and cannot be considered a suitable surrogate for BearingPoint’s PMR4 and PMR5 tests.¹⁰³ E&Y’s PMR1 testing claim is to only one of the 7 test evaluation criteria that are in the BearingPoint evaluation.

62. In its analysis, the Staff addressed E&Y’s findings that accepted, without challenge, SBC’s interpretations of the business rules governing the metrics.¹⁰⁴ However, the Staff observed that the interpretations at issue “are the definitional liberties that SBC Illinois has taken with specific performance measure business rule documents.”¹⁰⁵ The Staff also pointed out that modifications to the business rules governing the metrics “are discussed, agreed upon by participants in the six-month review collaborative, approved by the Commission and then implemented on a *prospective* basis.”¹⁰⁶ Noting that approximately 30 of SBC’s interpretations required modifications to the business rules, and that these modifications were not in effect during the March-May 2002 evaluation

¹⁰¹ ICC Staff Weber Aff. ¶ 83.

¹⁰² *Id.* ¶ 81.

¹⁰³ *Id.* ¶ 86.

¹⁰⁴ *Id.*, ¶ 100.

¹⁰⁵ Weber Aff., ¶ 99.

¹⁰⁶ *Id.*, ¶ 103 (emphasis added).

period, the Staff finds that SBC Illinois “has not reported its performance results in compliance with the business rules for the performance measures at issue during the E&Y evaluation period or for the September-October 2003 data submitted by the company as evidence of compliance to the 271 checklist in this proceeding”¹⁰⁷

63. Furthermore, consistent with its arguments here, SBC argued that it has implemented corrective action in response to E&Y’s findings, and that E&Y has confirmed that SBC Illinois has taken such action.¹⁰⁸ However, the Staff found that: SBC has not implemented all of the steps necessary to cure the defects in its data;¹⁰⁹ SBC Illinois has not yet restated all of its performance results that are error-ridden;¹¹⁰ and “there has been no verification performed by an independent party” to verify that the corrective action as reflected in the restated results has resolved the performance data deficiencies.¹¹¹ Citing E&Y’s testimony at hearing, the Staff found that E&Y provided “no assurance” to indicate that the data months “beyond May 2002 no longer contain the data inaccuracies” identified in SBC’s March, April, and May performance data.¹¹² Critically, the Staff also explained that the defects in SBC’s data during the evaluation period “go right to the heart” of SBC’s “accuracy and reliability problems, and are predictors of possible future problems, if not addressed.”¹¹³ Noting that SBC Illinois has addressed only some of the deficiencies E&Y identified, and that “E&Y performed

¹⁰⁷ *Id.*

¹⁰⁸ *See, e.g.,* Weber Aff., ¶ 92.

¹⁰⁹ *Id.*, ¶¶ 93-95, 97.

¹¹⁰ *Id.*, ¶ 95.

¹¹¹ *Id.*, ¶ 95.

¹¹² *Id.*, ¶ 92.

limited validation for these corrections,” the ICC Staff found that “[t]hese failings are . . . significant and undermine the ability for any party to properly evaluate” the performance data upon which SBC relies.¹¹⁴

64. Based upon the pool of evidence that SBC presented in this proceeding, the Staff has concluded that the performance data upon which SBC so heavily relies for approval are neither “accurate nor reliable.”¹¹⁵ The testimony of the Staff regarding the serious defects that have been uncovered as a result of third-party testing in Illinois confirms that there is no sound basis for a finding that SBC’s performance data are accurate and demonstrate statutory compliance.

65. There is one area where I must respectfully disagree with Staff’s approach. As I noted earlier, Staff’s primary recommendation is that the Commission should not “provide a positive Section 271 recommendation to the FCC prior to successful completion of the BearingPoint Performance Metric review.” Weber Aff., ¶ 136(1). This is the recommendation that the Commission should adopt. Staff also states that if the Commission “determines it will provide a positive Section 271 recommendation to the FCC prior to the conclusion of the BearingPoint Performance Metrics review, then the Commission should make its approval contingent upon a commitment from SBC Illinois that it will address all of deficiencies raised by BearingPoint in the metrics review and commit to successfully conclude the BearingPoint metrics review no later than November 2003.” *Ibid.*, ¶ 136(2).

¹¹³ *Id.*, ¶ 94.

¹¹⁴ *Id.*, ¶ 98.

¹¹⁵ *Id.*, ¶ 110.

66. This secondary recommendation is not advisable and should not be considered by the Commission for several reasons. First, SBC Illinois' completion of the PMR test is required by the Master Test Plan. As I explained in my initial Affidavit, to modify the exit criteria in such a manner so as to remove from its requirements the completion of a principle test family is antithetical to the process agreed to by the parties and SBC Illinois and approved by the Commission. Second, Staff's alternative seems to imply that there is no current requirement that SBC Illinois address all deficiencies raised by BearingPoint in the PMR test. This is not the case, the Commission's *SBC/Ameritech Merger Order* and the Master Test Plan require that testing continue until all exception reports have been closed, or that the Commission has indicated that no further testing is required. SBC Illinois is not in a position to agree or not agree to correct all deficiencies that are identified by BearingPoint. It must correct the deficiencies upon retest, or await Commission (or Staff) authorization to do otherwise.

III. SBC'S RESULTS IN THE ILLINOIS BEARINGPOINT PMR TEST ARE FAR WORSE THAN THOSE IN SIMILAR BEARINGPOINT PMR AUDITS.

67. In various portions of his Initial and Rebuttal Affidavits, Mr. Ehr notes that SBC Illinois' performance is either at a par or superior to that observed or shown in other BOC § 271 applications. For example, at paragraph 27 of his Rebuttal Affidavit, Mr. Ehr claims that SBC Illinois' flow-through rates were superior to that provided by other BOCs "whose section 271 applications have been approved."

68. As the BearingPoint PMR Report reveals, SBC satisfied only *23 percent* and failed 43 percent of the PMR test criteria, and the remaining 34 percent of the test criteria are indeterminate.¹¹⁶ The open exceptions and observations in Illinois, combined with BearingPoint's PMR Report, show that SBC Illinois' performance monitoring and reporting processes have been and continue to be plagued with serious deficiencies.

69. SBC Illinois' performance failures during BearingPoint's Illinois PMR test are substantially worse than those of BOCs that have received 271 authorization in states where BearingPoint has conducted similar PMR tests.¹¹⁷ As demonstrated in more detail below, in other states where BearingPoint has conducted similar PMR testing and the BOC has obtained 271 approval, the BOC passed over *90 percent* of the test criteria in the PMR tests. In view of the PMR test results of other BOCs that have obtained 271 approval, SBC Illinois' high failure rate during the Illinois PMR test, and the PMR testing in Illinois that remains to be conducted, this Commission must not and should not consider such poor results to be acceptable.¹¹⁸

Georgia

70. On February 14, 2002, BellSouth filed its application to provide in-region, interLATA services in Georgia in which it asserted that its performance data were accurate and reliable based upon performance metrics audits that BearingPoint

¹¹⁶ See, e.g., Ehr Aff., ¶ 234.

¹¹⁷ Although I did not participate in the audits that I describe herein, and therefore cannot profess to have personal knowledge of all of the details regarding those tests, the information that I provide in this affidavit is taken from publicly available reports, and has recently been provided in a declaration of which I was one of the declarants to the FCC in SBC's Michigan § 271 case.

¹¹⁸ Although the FCC has stated that it "cannot as a general matter insist that all audits must be completed at the time a Section 271 application is filed at the Commission," it has also explained that it "will give greater weight to evidence that has been audited." *Georgia/Louisiana 271 Order*, ¶ 19 at n. 68.

conducted.¹¹⁹ When BellSouth filed its Georgia/Louisiana Section 271 application, two performance metrics audits had been completed by BearingPoint and the third metrics audit was in progress. All three audits involved an analysis of the following five Performance Metrics Review (PMR) test components: (1) PMR-1: Data Collection and Storage Verification and Validation Review; (2) PMR-2: Metrics Definitions and Implementation Verification and Validation Review; (3) PMR-3: Metrics Change Management Verification and Validation Review; (4) PMR-4: Metrics Data Integrity Verification and Validation Review; and (5) PMR-5: Metrics Calculation and Reporting Verification and Validation Review.¹²⁰ In its application, BellSouth pointed out that these five test segments (PMR1-PMR5) were relevant in assessing the reliability of its performance data.¹²¹

71. The five test segments in BearingPoint's Georgia PMR test are similar to those in the Illinois BearingPoint PMR test with certain exceptions. The BearingPoint Illinois test includes test segment PMR3B which assesses SBC Illinois's "documented policies and procedures for recalculating remedy payments results for restated performance measures and for communicating these changes to the" ICC and CLECs.¹²²

¹¹⁹ BellSouth initially filed an application for 271 approval on October 2, 2001, but later withdrew that application after the Department of Justice and Commission Staff expressed concerns regarding, *inter alia*, the integrity of BellSouth's performance data.

¹²⁰ In Audits I and II, BearingPoint also conducted a Statistical Analysis Assessment (PMR-6) in which it assessed the statistical methods and processes that BellSouth used in evaluating parity of service. *See, e.g.*, Varner Supp. Aff., ¶¶ 48, 54, *Georgia/Louisiana 271 Proceeding*. During the Statistical Analysis Assessment, BearingPoint, using statistical tests, evaluated whether BellSouth's data met the parity test. In its Application, BellSouth stated that only the first five segments of the PMR test were relevant in evaluating the accuracy of its data. Audit III included a separate analysis of the accuracy of BellSouth's performance measures calculations under the Georgia performance enforcement plan ("SEEM").

¹²¹ Varner Supp. Aff., ¶ 48, *Georgia/Louisiana 271 Proceeding*.

¹²² BearingPoint PMR Report at 26.

PMR3B evaluates SBC's documentation only and does not assess the accuracy of SBC's performance remedy calculations. In contrast, in Audit III in Georgia, BearingPoint has evaluated and is continuing to evaluate the accuracy of BellSouth's performance remedy calculations.¹²³

72. Furthermore, the PMR4 (Data Integrity) and PMR5 (Metrics Replication) tests in Georgia appear to be more stringent than those in Illinois. In the Georgia audits, BellSouth was deemed to have passed PMR4 and PMR5 at the sub-metric level if 100 percent of the processed records corresponded with BearingPoint's test CLEC transactions data and the values reported by BellSouth matched exactly the values calculated by BearingPoint. In contrast, in the Illinois test, SBC can pass PMR4 if "95 percent of required records are included for each measure set evaluated in the measurement group"¹²⁴ and "95 percent of sample field values from processed CLEC aggregate data are consistent with unprocessed data from source systems for each measure set evaluation in the measure group."¹²⁵ Similarly, in the Illinois test SBC can pass PMR5 if BearingPoint replicates 95 percent of the metric values within the measure group.¹²⁶

73. Georgia Audit I, began in October 1999, involved an analysis of BellSouth's performance data based upon all of the measurements in the performance monitoring plan adopted by the Georgia Public Service Commission ("Georgia PSC") on

¹²³ See, e.g., Varner Supp. Aff., ¶ 56. Audits I and II in Georgia did not evaluate the accuracy of BellSouth's SEEM calculations.

¹²⁴ See, e.g., BearingPoint PMR Report at 120.

¹²⁵ See, e.g., BearingPoint PMR Report at 122.

¹²⁶ See, e.g., BearingPoint PMR Report at 195-96.

October 22, 1999. During Audit I and while BellSouth's Georgia/Louisiana 271 application was pending, BearingPoint found that BellSouth satisfied 415 of the 420 test criteria (*approximately 99 percent*) during Audit I.¹²⁷

74. In Audit II, BearingPoint validated BellSouth's 271 charts¹²⁸ "for consistency against published metrics definitions and accuracy of results replication against new data" and tested "new metrics and existing metrics with new or modified levels of disaggregation, analogs, benchmarks, business rules, data exclusions, report production processes/systems, [and] legacy source data feeds" that were implemented as a result of the Georgia PSC's June 6, 2000 Order.¹²⁹ In Audit II, which commenced in September 2000, BearingPoint executed the same test processes that were used in Audit I. When BellSouth's application was pending, Audit II closed with BearingPoint finding that BellSouth satisfied 100 percent of all test criteria.¹³⁰

75. Audit III commenced in March 2001. The Georgia PSC opened Audit III to evaluate BellSouth's performance data for new measures and levels of disaggregation that were approved by the Georgia PSC on January 16, 2001. During Audit III, BearingPoint also conducted and is still conducting the PMR7 test during which it is auditing BellSouth's compliance with the Georgia performance enforcement plan.

¹²⁷ See, e.g., Varner Aff., ¶ 407, *Georgia/Louisiana 271 Proceeding*; Varner Supp. Aff., ¶ 49, *Georgia/Louisiana 271 Proceeding*; Varner Supp. Reply Aff., ¶ 20, *Georgia/Louisiana 271 Proceeding*. See also BellSouth GA OSS Testing Evaluation Interim Status Report, dated May 24, 2002 at 1.

¹²⁸ BellSouth's 271 charts were charts that BellSouth created for 271 purposes which provided one year's worth of data for each sub-metric reported.

¹²⁹ See, e.g., Varner Aff., ¶ 90, *Florida/Tennessee 271 Proceeding* (discussing the Georgia audit).

¹³⁰ Varner Supp. Aff., ¶ 55, *Georgia/Louisiana 271 Proceeding*. See also BearingPoint Georgia Interim Report at 1 ("BellSouth has met and satisfied all evaluation criteria for Audit II.").

76. When BellSouth's Georgia/Louisiana 271 application was pending, portions of the metrics test in Audit III were not complete. But in its Georgia/Louisiana 271 application, BellSouth contended that its success in passing the test criteria during Audits I and II should serve as "reasonable indicators of Audit III results."¹³¹ Indeed, BellSouth contended that Audits I and II "standing alone should provide the Commission with a high degree of confidence that BellSouth's performance data are reliable."¹³²

77. In the *Georgia/Louisiana 271 Proceeding*, the Georgia PSC also asserted that Audits I and II were "comprehensive in scope, addressing everything from BellSouth's data collection and storage practices to data replication and data integrity,"¹³³ and that BearingPoint's re-examination of certain previously audited measures in Audit III "should not detract from the fact that the measure has already been audited at least once as part of the first two audits."¹³⁴ The Georgia PSC further asserted that the mere fact that BellSouth's data had been subjected to two completed audits "with relatively few open issues is strong evidence that BellSouth's performance data are accurate."¹³⁵

78. In its *Georgia/Louisiana 271 Order*, this Commission, citing BellSouth's testimony with approval, found that BellSouth's data were accurate based upon, *inter alia*, the "extensive third-party auditing" that had been conducted in Georgia.¹³⁶ Thus, when the FCC approved BellSouth's Georgia/Louisiana 271 application, it found that BellSouth's data were accurate based upon, *inter alia*, Audit I in which BellSouth

¹³¹ *Id.*

¹³² Varner Supp. Aff., ¶ 33, *Georgia Louisiana 271 Proceeding*.

¹³³ Georgia Public Service Commission Comments at 29, *Georgia/Louisiana 271 Proceeding*.

¹³⁴ *Id.*

¹³⁵ *Id.* at 29.

¹³⁶ *Georgia/Louisiana 271 Order* ¶ 19.

satisfied approximately 99 percent of the test criteria and Audit II in which BellSouth satisfied 100 percent of the test criteria. In stark contrast, as noted above, when BearingPoint issued its Illinois report, SBC Illinois passed only 23 percent of the test criteria in the performance metrics audit. And the Georgia PMR4 and PMR5 tests that BellSouth passed in Audits I and II were more stringent than the comparable PMR tests in Illinois.

BellSouth Five State Application

79. On June 20, 2002, BellSouth filed its 271 application for authority to provide in-region, interLATA services in Alabama, Kentucky, Mississippi, North Carolina, and South Carolina (“Five State Application”). No separate OSS tests were conducted in these states. In its Five State 271 application, BellSouth emphasized that its Operations Support Systems (“OSS”) were regional, and that “BellSouth’s data are produced by the same organization, using the same processes, computer systems/programs and the same computer programming staff to revise and maintain the systems for the region.”¹³⁷ BellSouth also contended that its data were accurate and demonstrated statutory compliance based upon, *inter alia*, the audits that were conducted in Georgia.¹³⁸

80. Although Georgia Audit III was still in progress at the time BellSouth filed its Five State Application, BellSouth, consistent with its arguments in the *Georgia/Louisiana Proceeding*, contended that Audits I and II “standing alone, should provide the Commission with a high degree of confidence that BellSouth’s performance

¹³⁷ See Varner Aff., ¶ 60, *BellSouth Five State 271 Proceeding*.

data are reliable.”¹³⁹ In its Order on the Five State 271 Application, the FCC found that BellSouth’s OSS in Georgia were “substantially the same as the OSS in each of the five states,” and that BearingPoint’s third-party test conducted in Georgia was relevant and would be considered in evaluating BellSouth’s Five State 271 application.¹⁴⁰ The FCC, citing with approval BellSouth’s testimony, found as it did in the *BellSouth Georgia/Louisiana Order* test that “BellSouth’s performance metric data are accurate, reliable, and useful”¹⁴¹ based upon, *inter alia*, “extensive third party auditing” that had been conducted. At the time the FCC approved BellSouth’s Five State Application, Audits I and II had been completed, and BellSouth had passed 100 percent of the test criteria.¹⁴²

Florida/Tennessee

81. On September 20, 2002, BellSouth filed its Section 271 application for authority to provide in-region, interLATA services in Florida and Tennessee. In its Florida/Tennessee 271 application, BellSouth contended that the accuracy and reliability of its performance data were confirmed by: (1) Audit I in Georgia which “was closed on August 6, 2002 with all evaluation criteria satisfied;”¹⁴³ and (2) Audit II in Georgia which “was closed on April 2, 2002 with all evaluation criteria satisfied.”¹⁴⁴ When BellSouth filed its Florida/Tennessee 271 application, BearingPoint’s Audit III in Georgia and

¹³⁸ *Id.*, ¶¶ 127-159.

¹³⁹ *Id.* ¶ 130.

¹⁴⁰ *BellSouth Five State 271 Order*, ¶ 130.

¹⁴¹ *Id.* ¶ 16.

¹⁴² See BellSouth GA OSS Testing Evaluation Interim Status Report, dated September 6, 2002 at 1.

¹⁴³ Varner Reply Aff., *Florida/Tennessee 271 Proceeding*, filed November 1, 2002 ¶ 48.

separate performance metrics test in Florida were still in progress. Consistent with its approach in its Georgia/Louisiana and Five State 271 applications, BellSouth argued in the *Florida/Tennessee 271 Proceeding* that BearingPoint's completed Georgia Audits I and II which at that time had "closed with all evaluation criteria satisfied" should "standing alone . . . provide the Commission with a high degree of confidence that BellSouth's performance data are reliable."¹⁴⁵ The FCC, citing *inter alia*, its *Five State 271 Order* and *Georgia/Louisiana 271 Order*, as well as BellSouth's testimony in the *Florida/Tennessee 271 Proceeding*, found, once again, that BellSouth's performance data were accurate.¹⁴⁶

New Jersey

82. On March 26, 2002 Verizon New Jersey, Inc. ("Verizon") filed its Section 271 application for authority to provide in-region, interLATA services in New Jersey. In its application, Verizon contended that its data were accurate and reliable based upon the third-party test conducted by BearingPoint which included a performance metrics audit consisting of the following five test segments: PMR1 (Metrics Standards and Definitions Documentation Verification and Validation Review); PMR2 (Data Collection and Storage Verification and Validation Review); PMR3 (Metrics Calculations and Reporting Verification and Validation Review); PMR4 (Metrics Data Filtering and Integrity Verification and Validation Review); and PMR5 (Metrics Change Management

¹⁴⁴ Id.

¹⁴⁵ Varner Aff. ¶ 82, *Florida/Tennessee 271 Proceeding*.

¹⁴⁶ See *Florida/Tennessee 271 Order*, ¶ 16 n. 47 (citing initial and reply affidavits of BellSouth's witness Alphonso Varner and the Commission's *BellSouth Five State 271 Order* and *Georgia/Louisiana 271 Order*).

Verification and Validation Review).¹⁴⁷ These five test segments mirror those in the BearingPoint Illinois performance measurement audit.¹⁴⁸

83. Critically, at the time of Section 271 approval, Verizon passed 100 percent of the test criteria in BearingPoint's five PMR test segments.¹⁴⁹ In its decision, the FCC, "noting the thoroughness and rigorousness with which KPMG conducted its military-style test . . .," saw "no need to question the reliability of the data Verizon submitted in its application."¹⁵⁰

Pennsylvania

84. On June 21, 2001, Verizon Pennsylvania Inc. ("Verizon") applied for authority to provide in-region, interLATA services in Pennsylvania. In its application, Verizon argued that its performance data were accurate based upon the "extensive military-style testing" that BearingPoint conducted during the performance metrics review of its third-party test.¹⁵¹ The Pennsylvania performance metrics component of BearingPoint's OSS test involved an examination of the following five test segments: PMR1 (Collection and Storage of Data Verification and Validation Review); PMR2 (Data Transformation Verification and Validation Review); PMR3 (Development and Documentation of Standards and Definitions Verification and Validation Review); PMR4 (Change Management of Standards and Definitions Verification and Validation Review);

¹⁴⁷ See Verizon New Jersey Comments at 101, *New Jersey 271 Proceeding*; Guerard/Canny/DeVito Decl., ¶ 130, *New Jersey 271 Proceeding*; BearingPoint Verizon New Jersey Inc. OSS Evaluation Project Report, dated October 12, 2001 ("BearingPoint New Jersey Report") at 355-409.

¹⁴⁸ The New Jersey PMR test did not include the PMR3B segment in the Illinois test.

¹⁴⁹ *Id.*

¹⁵⁰ *New Jersey 271 Order*, ¶ 89.

¹⁵¹ See Guerard/Canny/DeVito Decl., ¶¶ 134-146, *Pennsylvania 271 Proceeding*.

and PMR5 (Metric Replication).¹⁵² Although the PMR test numbers in Pennsylvania differ from those in Illinois, the actual test segments are essentially the same in both tests.¹⁵³

85. In its final report, BearingPoint found that Verizon had implemented satisfactory procedures for collecting and storing the raw data used to calculate performance results and satisfied 100 percent of the applicable test criteria in the PMR1 test segment.¹⁵⁴ BearingPoint also found that Verizon satisfied 100 percent of the applicable test points in the PMR2 test segment which evaluated whether Verizon had implemented appropriate procedures to convert its raw data into reported performance results.¹⁵⁵ BearingPoint found that Verizon satisfied 100 percent of the applicable test criteria in the PMR3 test, which evaluated whether Verizon had implemented appropriate procedures for developing and documenting the metrics standards and definitions.¹⁵⁶ During the PMR4 test, which evaluated Verizon's policies and practices for implementing changes to the measurement standards, definitions, and calculations of performance results, BearingPoint found that Verizon satisfied five of eight test criteria.¹⁵⁷ With respect to the "81 applicable 'test points' in these four portions of BearingPoint's review, Verizon satisfied 78, or over 96 percent."¹⁵⁸

¹⁵² BearingPoint Pennsylvania Report at 573-666.

¹⁵³ The Pennsylvania PMR test did not include the PMR3B segment in the Illinois PMR test.

¹⁵⁴ BearingPoint Verizon Pennsylvania, Inc. OSS Evaluation Project Final Report, Version 2.0, dated December 22, 2000 ("BearingPoint Pennsylvania Report") at 575-589.

¹⁵⁵ *Id.* at ⁵⁹¹-617.

¹⁵⁶ *Id.* at ⁶¹⁹-627.

¹⁵⁷ *Id.* at ⁶²⁹-649.

¹⁵⁸ Guerard/Canny/DeVito Decl., ¶ 134, *Pennsylvania 271 Proceeding*.

86. During the PMR5 test segment, in which BearingPoint attempted to replicate Verizon's performance results for July and September 2000,¹⁵⁹ Verizon satisfied 20 of 32 test criteria (approximately 63 percent).¹⁶⁰ Noting, *inter alia*, the deficiencies uncovered during the PMR5 (Metric Replication) test, the Pennsylvania PUC advised Verizon that a separate replication study should be conducted of Verizon's January 2001 performance data.¹⁶¹ At the direction of the Pennsylvania PUC, BearingPoint conducted a standalone replication test of Verizon's January 2001 results.¹⁶² In this separate replication test, BearingPoint successfully replicated 99 percent of the metrics values that Verizon reported.¹⁶³ After reviewing the results of BearingPoint's separate replication test, the Pennsylvania PUC found that Verizon "satisfied the open replication issue from the OSS Test."¹⁶⁴

87. Additionally, at the request of the Pennsylvania PUC, BearingPoint separately conducted three PMR tests with respect to 20 measurements, which had been added to the performance measurement plan and were not tested during BearingPoint's initial Pennsylvania OSS test. During its separate review of these 20 measurements, BearingPoint assessed Verizon's procedures for collecting and storing data, processes for converting its raw data into reported results, and documentation and development of

¹⁵⁹ *Id.*, ¶ 141.

¹⁶⁰ BearingPoint Pennsylvania Report at 651-661.

¹⁶¹ See Verizon Pennsylvania 271 Application, App. B, Tab BB-2, Letter from James L. McNulty to Verizon PA, Inc., dated January 5, 2001.

¹⁶² *Id.*

¹⁶³ *Id.*, App. B, Tab F-3, BearingPoint's January Metrics Replication Report at 3-6.

¹⁶⁴ Pennsylvania PUC Consultative Report at 258, *Pennsylvania 271 Proceeding*.

metrics definitions and standards.¹⁶⁵ BearingPoint found that Verizon satisfied 100 percent of the applicable test criteria during this separate review.¹⁶⁶

88. Furthermore, at the request of the Pennsylvania PUC, BearingPoint conducted a separate “Commercial Availability Review” during which BearingPoint compared performance data from January to March 2001, which were provided by the CLECs and Verizon covering 25 measurements.¹⁶⁷ During this review, BearingPoint determined that, “[b]ased on the data made available,” there were “no instances where [a] CLEC identified discrepancies with the Verizon Pennsylvania reported values [that] could be fully substantiated” by the CLECs.¹⁶⁸

89. Thus, during BearingPoint’s OSS test in Pennsylvania, Verizon satisfied 96 percent of the test criteria during the first four segments of the PMR test. Although Verizon initially passed only 63 percent of test criteria during the PMR5 (metrics replication) test, BearingPoint, at the direction of the Pennsylvania PUC, conducted a separate replication analysis of Verizon’s more recent performance data and found that Verizon satisfied more than 99 percent of the applicable test points in the PMR5 test. Additionally, during its testing of new measures which had been added to the performance monitoring plan, BearingPoint found that Verizon satisfied 100 percent of

¹⁶⁵ In its PA Metrics Differences Analysis (2001), BearingPoint reported that: (1) the PMR4 test was not used during this review because “this test is executed at the macro level, not at the individual metric level” and (2) the PMR5 test was not used because “the January PA Replication activity eliminated the need for this test.” Verizon Pennsylvania 271 Application, App. B, Tab F-4, PA Metrics Differences Analysis (2001) at 1.

¹⁶⁶ See *id.* at 5-9.

¹⁶⁷ See Verizon Pennsylvania 271 Application, App. B, Tab F-5, BearingPoint Commercial Availability Review Final Report – Metrics, dated May 31, 2001.

¹⁶⁸ *Id.* at 25.

the test points. Furthermore, during the separate data reconciliation tests conducted at the request of the Pennsylvania PUC, BearingPoint found no instances where discrepancies in reported results had been substantiated by CLECs. Based upon the foregoing, it is plainly evident that the meager 23 percent of PMR test criteria that SBC Illinois has passed in BearingPoint's Illinois PMR test is substantially worse than the test results in the Pennsylvania PMR test.

Virginia

90. On August 1, 2002, Verizon filed its Section 271 application for authority to provide in-region, interLATA services in Virginia. In its application, Verizon argued that its data are accurate and reliable based upon the performance metrics review conducted by BearingPoint as part of its third-party test of Verizon's OSS.¹⁶⁹ The performance metrics portion of the OSS test that BearingPoint conducted in Virginia consisted of the following five test segments: PMR1 (Metrics Standards Definitions Documentation Verification and Validation Review); PMR2 (Data Collection and Storage Verification and Validation Review); PMR3 (Metrics Calculation and Reporting Verification and Validation Review); PMR4 (Metrics Data Filtering and Integrity Verification and Validation Review); and PMR5 (Metric Change Verification and Validation Review).¹⁷⁰ These test segments are similar to those in the Illinois PMR

¹⁶⁹ See, e.g., Verizon Application at 11, 12; Guerard/Canny/DeVito Decl., *Virginia 271 Proceeding*.

¹⁷⁰ See BearingPoint Verizon Virginia Inc. OSS Evaluation Project Final Report Version 2.0, dated April 15, 2002 ("BearingPoint Virginia Report") at 421-483.

test.¹⁷¹ Significantly, at the time Verizon filed its Virginia 271 application, Verizon had satisfied 100 percent of the applicable test criteria in all segments of the PMR test.¹⁷²

91. As the foregoing demonstrates, in those proceedings in which BearingPoint has conducted essentially the same five-segment metrics test that it is conducting in Illinois, the BOC passed well over 90 percent of the test criteria in the PMR test. In stark contrast, at the time BearingPoint issued its Illinois PMR report, SBC Illinois had satisfied only 23 percent of the test criteria. In view of the high percentage of BearingPoint PMR test criteria satisfied by other BOCs that have received Section 271 approval, the substantial deficiencies in SBC Illinois monitoring and reporting processes as reflected in BearingPoint's PMR Report and open exceptions and observations, the weight of the evidence compels the conclusion that SBC Illinois has not demonstrated the accuracy, reliability, and completeness of the performance data on which it relies.

IV. RESPONSE TO REBUTTAL AFFIDAVIT OF MARK COTTRELL

92. In this portion of my Rebuttal Affidavit, I respond to several issues raised by SBC Witness Cottrell in his Rebuttal Affidavit.¹⁷³ Similar to my response to Mr. Ehr's rebuttal affidavit, my response begins with a preliminary point concerning Mr. Cottrell's most recent submission. Early in his rebuttal affidavit, Mr. Cottrell states: "[T]he CLEC witnesses do not devote much attention to the BearingPoint Operational

¹⁷¹ The Virginia PMR test did not include an examination of test segment PMR3B in the Illinois test.

¹⁷² *Id.*

¹⁷³ See Phase II Rebuttal Affidavit of Mark J. Cottrell on Behalf of SBC Illinois (filed March 3, 2003), at ¶ 5 (filed March 3, 2003) (hereinafter "Cottrell Rebuttal Aff.").

Report. Rather, they raise miscellaneous operational issues that they have encountered in the past six months or so.” Cottrell Rebuttal Aff., ¶ 5. He goes on to assert:

CLECs take great pains to portray these incidents as evidence of an overall failure in the SBC Illinois OSS. They are not. While SBC Illinois takes these issues seriously as a business matter, they do not reflect serious flaws in SBC Illinois OSS systems, as evidenced by the fact that the BearingPoint report was overwhelming positive and by the fact that CLECs continue to make intensive use of the OSS to win an ever-increasing share of local business.¹⁷⁴

93. Mr. Cottrell is incorrect to assert that CLECs have not raised concerns regarding the testing of the operational readiness of SBC Illinois’ OSS. My initial Affidavit pointed out a series of outstanding testing issues, which in their totality, make it highly improbable that SBC Illinois can satisfy the applicable FCC checklist standards for OSS. *See* Connolly Initial Aff., ¶¶ 194-220. In fact, despite his claim that CLECs have devoted little attention to testing issues, Mr. Cottrell spends a significant portion of his Rebuttal Affidavit responding to the “testing” points raised in my initial Affidavit.

94. More importantly, Mr. Cottrell’s suggestion that these issues would not impact his view that SBC Illinois’ OSS are essentially “sound” reflects exactly the misguided approach I cautioned against in my opening affidavit. There, I noted (for example, at ¶ 38) that the Commission must review the test results in a comprehensive manner, and in particular, must consider *both* PMR and operational testing results (in addition to the actual commercial experience described by Ms. DeYoung and Mr. Willard in their joint affidavit) before drawing any conclusions. I believe that Mr. Cottrell’s most recent affidavit attempts to again entice the Commission away from the correct approach.

¹⁷⁴ *Id.*, ¶ 5.

The correct standard is not that the OSS are “sound”¹⁷⁵ but that SBC Illinois prove that its OSS are non-discriminatory.

95. For example, Mr. Cottrell alludes to resolving issues in a “business to business” context. He claims: “I have shown that the examples raised by the CLECs are almost exclusively problems that are quickly corrected and resolved on a business-to-business basis between the parties.”¹⁷⁶ It cannot be the case, however, that SBC Illinois believes that it is appropriate to resolve third-party test issues through business-to-business negotiations. The MTP does not allow for this type of approach. To avoid any suggestion that this method is acceptable, the Commission must reaffirm the principle that test exceptions and observations must either be subject to successful retest or remain open (unless the Staff specifically authorizes closure).

96. Mr. Cottrell also mentions (and attaches) certain draft “Compliance Plans” that the Michigan Public Service Commission ordered to be prepared in Michigan Case No. U-12320. It is not clear to what purpose Mr. Cottrell intends for these documents in this case. The Illinois Master Test Plan establishes the testing procedure and criteria for the third-party test ongoing in Illinois. The Michigan Compliance Plans do not relieve BearingPoint or SBC Illinois from satisfying the MTP requirements in Illinois. Indeed, the MTP itself does not authorize the use of “Compliance Plans.”

97. Moreover, as SBC Illinois admits, the draft Compliance Plans under consideration in Michigan are just that – drafts. The Michigan commission has not approved them. Nor do the parties agree them to. I personally attended the two-days of

¹⁷⁵ *Id.*

collaboratives (March 4 and 5, 2003) and I would note that several parties (including AT&T) have disputed the efficacy of SBC's proposed plans. Indeed, the plans attached to Mr. Cottrell's rebuttal affidavit are now out of date, because they have been superseded by later, revised draft Compliance Plans. Even revised, however, I consider the draft Compliance Plans to be insufficient and, in important ways, in conflict with the Master Test Plan in Illinois. Whatever Mr. Cottrell's intent in attaching these plan, I do not believe they will serve any useful purpose in this phase of the Illinois proceedings.

98. Finally, I would like to respond to Mr. Cottrell's comments regarding the timing of retesting activities. Responding to Staff witness Weber regarding Staff's position that all retesting should be completed by November 2003, Mr. Cottrell states: "As recent history with BearingPoint has demonstrated, testing can take on a life of its own and SBC Illinois cannot vouch for when the third party completes its work."¹⁷⁷ In a later paragraph, Mr. Cottrell states:

Although SBC Illinois does not have the complete control required to insure completion of testing by August, 2003 as requested by Ms. Weber, SBC Illinois will continue to work with BearingPoint and perform any necessary corrective actions associated with these two issues in a timely manner.¹⁷⁸

99. These comments are misleading. In my view, the only party who has *control* over when the test will be successfully completed is SBC Illinois. It alone possesses all of the information necessary to satisfy test criteria. Certainly, BearingPoint has no power to *force* SBC Illinois to fix its OSS. BearingPoint can only identify –

¹⁷⁶ Cottrell Rebuttal Aff., ¶ 144.

¹⁷⁷ Cottrell Rebuttal Aff., ¶ 8.

¹⁷⁸ *Id.*, ¶ 11.

pursuant to the MTP – test results that will cause SBC Illinois to fail a test criteria. And only SBC Illinois has the resources to commence retesting of a test failure and the means to do so with speed and efficiency.

100. Therefore, SBC Illinois should not be heard to complain that it has “no control” over the third-party test. Exactly the opposite is true – only SBC Illinois has the necessary means to successfully complete the test. Until it recognizes this fact and acts upon it accordingly, SBC Illinois will remain mired in unsuccessful test results.

101. In the remainder of my Rebuttal Affidavit, I will respond to several of the specific responsive arguments submitted by Mr. Cottrell in his rebuttal affidavit. To the extent that I do not mention a particular argument, the Commission should assume that I believe that my initial Affidavit continues to provide sufficient grounds for my position on the issue.

102. **PreOrder/Order Integration.** In my initial Affidavit, I pointed out that the BearingPoint test did not test SBC Illinois’ ability to “integrate” pre-order information into orders. Connolly Aff., ¶ 218-220. In response, Mr. Cottrell does not dispute the statement made by BearingPoint’s representative, that BearingPoint “did not capture electronically all of the information from the preorder and then mechanically insert that into the LSR.”¹⁷⁹ Rather, Mr. Cottrell points to the BearingPoint’s test report notation regarding “preorder/order integration *process*.”¹⁸⁰ In other words, BearingPoint used a “manual” process to transfer information from a preorder response into a local service request (or LSR).

¹⁷⁹ Connolly Initial Aff., ¶ 219.

103. Thus, I do not believe that SBC Illinois can truthfully claim that BearingPoint has validated its preorder/order integration. True, BearingPoint has validated a manual means for populating local service orders using preorder information. But this is not enough, and, in fact, has been rejected by the FCC. *See* BellSouth Louisiana Order, ¶ 96 (Oct. 13, 1998) (“We found that this impeded the ability of competing carriers to modify their systems to permit integration.”).

104. The Commission must order BearingPoint to further explore the electronic, or application-to-application preorder/order integration capabilities of SBC Illinois’ OSS.

105. **Testing of LSOG 5.** In Mr. Cottrell’s response to my concerns regarding the correct “LSOG” interface to be tested, he misstates (or otherwise confuses) my argument. To Mr. Cottrell, the question is whether LSOG 5 should be tested – a question he answers with a most emphatic “no”. The question I raised in my initial Affidavit is slightly different. The question I pose is whether the Commission should be concerned that BearingPoint will have based its opinion on the competency of the pre-ordering and ordering system on an OSS “interface” that most likely will be retired before the completion of the test.

106. Mr. Cottrell does not contradict my assertion that the LSOG 4 interface will be retired in just three months – in June 2003. Thus, at nearly the same time that the Commission will be reviewing the test results of the third-party test for LSOG 4, it will cease to be available to CLECs who wish to employ it to submit preorder queries, place

¹⁸⁰ Cottrell Rebuttal Aff., ¶ 25 (quoting the BearingPoint PMR Report, p. 145).

and have provisioned orders for their customers. Carriers will have – by necessity – migrated to LSOG 5 or 6, which offer new or modified OSS functionality, and which operates through interfaces that are significantly different from LSOG 4 interfaces.

107. Thus, this is not an attempt by any party (least of all AT&T) to introduce delay in the testing (as Mr. Cottrell suggests at ¶ 58 of his Rebuttal Affidavit). The delay has already occurred, and it resulted not from any action on AT&T's or other parties' fault. SBC Illinois' testing of its OSS has been overtaken by the sheer length of time it has taken for it to provide satisfactory test results. It is SBC Illinois that has introduced delay, and now put the Commission in the position of reviewing test results for an interface that will be retired in just a few months. To the best of my knowledge, no BOC § 271 application has been approved where the interface tested has been retired and is no longer available for CLEC use.

108. The Commission should order SBC Illinois to submit to further testing expanded to include the LSOG 5 functionality that CLECs will use following the imminent retirement of LSOG 4.

109. This concludes my rebuttal affidavit.